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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,882	02/01/2007	David E. Vokey	85533-102	8847

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EXAMINER	
VALONE, THOMAS F	
ART UNIT	PAPER NUMBER
2831	

MAIL DATE	DELIVERY MODE
01/19/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/534,882	**Applicant(s)** VOKEY ET AL.	
	Examiner THOMAS F. VALONE	**Art Unit** 2831	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *12,13,15,16,18-28*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 1/6/10
13. ☐ Other: _____.

/Thomas F Valone/
Examiner, Art Unit 2831

Continuation of 3. NOTE: The proposed amendments have not been searched and require further consideration. The newly cited references have been considered as requested. It is noted that Rosenau (4,259,633) teaches dual pins that "may be driven into the wood at appropriate distance from one another" (col. 2, line 58) which seems to read on the argument which the applicant is emphasizing, thus providing additional prior art motivation to combine staples and moisture detecting tape.

As to the argument concerning each probe comprising a staple and each pair of probes comprise a staple, with both "prongs" of the second staple driven into the second conductor, these limitations do not seem to be claimed. Furthermore, the applicant is hereby put on notice that in light of the specification, applicant admits that "The probes are of a dual prong design" (instant specification, p. 7, par. 2) and there are "ten pairs of moisture probes" (instant specification, p. 7, par. 4). Therefore, in view of the disclosed and claimed "pairs of probes" and "dual prong design", there seems to be no other interpretation possible, to one of ordinary skill in the art, than to assume that the terms "probe" and "prong" are to be used interchangeably, especially with the applicant's additional argument that each probe "includes at least one rigid elongate conductive element". This type of claim language renders the claim indefinite and thus, the rejection under 35 USC 112-2nd of which arguments to the effect of "across the two flat conductors" versus "in the two flat conductors" (but not claimed), do not change such a synonymous definition, which is not a broad interpretation by any means, since no evidence to the contrary is claimed. Thus directed by the applicant's own disclosure and claim terminology, the ordinary skill interpretation also accomodates the argument regarding the boldface and underlined claim terminology "inserted parallel to one another in the two flat conductors" since this geometry is also accomplished when prong is substituted for probe in the claims and longitudinal spaced locations are implemented with pairs of probes (prongs). It is not persuasive that the manner in which the prior art staples are forced into the leak detecting tape, which is also in the prior art, is somehow an innovative step, since even the staple gun tools to do so are in the prior art.

It is noted that the applicant further argues that "the separate prongs of the staple are not the individual probes" (Remarks, 1/6/10, p. 14). However, the claim terminology can be read as if they are the same and the method carried out by one of ordinary skill, with indeterminate results.

In regards to the argument that there is simply no disclosure in the prior art of where the staples should be located, apparently the newly cited Rosenau reference reinforces the existing obviousness rejection in the final Office Action as noted above.

Regarding the argument that claim 27 claims a hydrophobic substrate and a water pervious top coating which is not found in Stewart, it is noted that actually Stewart teaches "additional permeable insulation 5" and "permeable adhesive insulation 2" (p. 3) which is not "difficult to understand" as argued but instead broadly reads on the protective layer water pervious limitation of claim 27 to one of ordinary skill, as noted in the existing obviousness rejection in the final Office Action. As to the claimed hydrophobic substrate, this is found in the Gott reference who seems to be omitted from the applicant's argument. The prior art reference Gott, also cited in the obviousness rejection in the final Office Action, explicitly teaches a substrate formed of "any suitable flexible electrically insulating material, such as plastic, rubber" (col. 3, line 48-49) which are hydrophobic materials, to one of ordinary skill. Therefore, both claimed features are found in prior art references used for the same endeavor. Furthermore, it is noted that the applicant has already claimed and received patent protection for such a "protective layer of non-hygroscopic, water pervious material secured to the top surface of the substrate tape and extending over the two sensing conductors" in claim 1 of patent #7,292,155 drawn to the same inventive subject matter of moisture detection tape.